

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

**STIPULATIONS**

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

- (1) What is the nature and extent of claimant's injury and disability, if any?
- (2) What is the average weekly wage of claimant?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record, including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Award of the Administrative Law Judge fully sets forth the appropriate factual and legal findings in this case and said Award is adopted by the Appeals Board as its own.

The six percent (6%) functional impairment assessed to the claimant is the impairment rating given by the treating physician, Dr. James L. Gluck, who, during his period of treatment of the claimant, had the opportunity to evaluate claimant's condition. The Appeals Board finds said impairment rating is appropriate.

Claimant's contention that he is entitled to a work disability is not supported by the evidence in the record as claimant is currently earning an hourly wage equal to that which he was earning at the time of his injury. Claimant is also being paid benefits and has the ability and the availability to work overtime with his current employer. Claimant has elected to limit himself from working overtime. This election is not supported by, and has no foundation, in the medical restrictions or limitations of either Dr. Gluck or Dr. Koprivica. As such, the Appeals Board finds claimant is not entitled to work disability having exhibited the ability to earn a comparable wage.

The final issue raised by the parties deals with the claimant's average weekly wage. The Appeals Board looks with some concern upon the dispute between the claimant alleging a \$388.34 average weekly wage and the respondent alleging a \$386.96 average weekly wage. The \$1.38 dispute has now been considered and determined by one (1) Administrative Law Judge and five (5) members of the Workers Compensation Appeals Board. It would appear as though reasonable minds could reach a resolution of this dispute without the necessity for the involvement of six (6) triers of fact. A more cooperative attitude would greatly assist in a reduction in litigation in our grossly overburdened legal system. The Appeals Board finds the Administrative Law Judge's determination of a \$386.96 average weekly wage is supported by the evidence and adopts the same as its finding.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated February 28, 1994, is affirmed and claimant is entitled to an award of 41 weeks temporary total disability

compensation at the rate of \$257.99 per week totaling \$10,577.59 followed by 374 weeks permanent partial general body disability compensation at the rate of \$15.48 per week totaling \$5,789.52 for a six percent (6%) permanent partial general body disability making a total award of \$16,367.11.

As of March 13, 1995, there would be due and owing to claimant 41 weeks temporary total disability compensation at the rate of \$257.99 per week in the sum of \$10,577.59 followed by 150.14 weeks permanent partial general body disability compensation at the rate of \$15.48 per week in the sum of \$2,324.17 for a total due and owing of \$12,901.76 which is ordered paid in one lump sum minus any amounts previously paid. Thereafter, the remaining balance of \$3,465.35 shall be paid at the rate of \$15.48 per week for 223.86 weeks or until further order of the Director.

The fees necessary to defray the expenses of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent and its insurance carrier as follows:

OWENS, BRAKE & ASSOCIATES

Preliminary Hearing Transcript Dated September 17, 1992	\$ 110.10
Regular Hearing Transcript Dated November 17, 1993	\$ 155.40
Deposition of Dr. James Gluck Dated December 6, 1993	\$ 297.20
Total	\$ 562.70

GENE DOLGINOFF ASSOCIATES, LTD.

Deposition of Dr. P. Brent Koprivica	\$ 327.45
Dated November 30, 1993	

DON K. SMITH & ASSOCIATES

Deposition of James T. Molski	\$ 244.50
Dated January 7, 1994	

APPINO & BIGGS REPORTING SERVICE

Deposition of Mark Conboy	\$ 105.00
Dated January 21, 1994	

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John M. Ostrowski, Topeka, KS  
John W. Mize, Salina, KS  
George R. Robertson, Administrative Law Judge  
George Gomez, Director